



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E. ALSILMI & GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by an agent, SA (“landlord”). As both parties were present, service of documents was confirmed. The tenant acknowledged receipt of the landlord’s Notice of Dispute Resolution Proceedings and stated he had no issues with timely service of documents. The landlord testified she did not receive any evidence from the tenant. The tenant testified that he uploaded his evidence to the Residential Tenancy Branch’s dispute management site but might have misunderstood the requirement to serve the landlord with the same evidence. The tenant acknowledged he did not serve the landlord with copies of his evidence. Consequently, I advised the parties that I would not be able to refer to any of the tenant’s documentary evidence pursuant to Rule 3 of the Residential Tenancy Branch Rules of Procedure.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the allowed documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails submitted by the landlord and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The fixed one-year tenancy began on September 1, 2016, becoming month to month at the end of the first year. Rent was originally set at \$1,280.00 per month payable on the first day of each month. A security deposit of \$640.00 was collected which the landlord continues to hold.

The landlord testified that a condition inspection report was not done with the tenant at the commencement of the tenancy. The landlord acknowledges this as a "big miss on our part". The landlord stated that the tenant was good throughout the tenancy and that they had a great relationship.

The tenancy ended when the tenant gave a 1 month notice to end tenancy. The tenant left the rental unit in his girlfriend's control and went to work in Montreal. A "walkthrough" was done at the end of the tenancy with the landlord's colleague, "J" and the tenant's girlfriend present. No written report was completed and signed. At the end of the tenancy, the landlord noted that there was food left in the cupboards and refrigerator and various items were left behind throughout the unit. The stove and oven were also left uncleaned. A closet door had punch holes in it, a shower rod was broken, and a towel rack was missing. The landlord's colleague invoiced her \$424.36, including materials to fix the items.

In addition to the dirty fridge, stove and cupboards, the tenant left behind 4-5 bags of trash. Another contractor was paid \$150.00 to clean the rental unit and repaint the patched holes in the unit. The landlord provided photos of the rental unit taken at move out as evidence for this hearing.

The tenant gave the following testimony. He was offered a job in Montreal and had to leave the move-out duties to his common-law girlfriend, since he was already gone before the end of the month. The tenant's girlfriend was present on the last day of the tenancy and completed the walkthrough with "J", the landlord's colleague. There was no condition inspection report done with him at the commencement of the tenancy.

The tenant acknowledges the damage to the closet doors happened during the tenancy. The tenant arranged for "J" to purchase new doors if they were reasonably priced and that the tenant himself would reinstall them. That never happened prior to the end of the tenancy. The tenant testified that there was no towel rod in the bathroom and that the landlord can't seek to have it replaced.

At the end of the tenancy, the tenant planned on leaving items for the next tenant to use, as they were arriving with "just a suitcase". The tenant called his girlfriend as a witness who corroborated the tenant's testimony. According to the witness, she and "J" walked through the unit and the witness showed "J" how everything was clean except for the kitchen. The witness pointed out things not yet done, such as throwing left behind items into a garbage bag, but "J" said there was no need since the next tenant could likely use them. According to the witness, "J" agreed that even the food left behind in the fridge was acceptable.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, I look to the landlord's application to retain the tenant's security deposit.

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In this case, section 38(6) requires that the tenant's security deposit of \$640.00 be doubled to \$1,280.00. I start from the finding that the landlord must compensate the tenants in the amount of **\$1,280.00**.

Next, I turn to the landlord's claims. The first claim is for \$424.36 for labour and supplies to repair and replace the doors, the shower rod and the bathroom towel rack. The tenant acknowledges he damaged the doors but was unable to repair and replace them before moving out. Although the tenant testified that he gave the landlord's colleague the task of sourcing replacement doors so that the tenant could install them himself, on the condition that it fell within his preferred price range; I find the argument lacks credibility. At the end of the tenancy, the condition of the unit must be repaired by the tenant. It is the tenant's responsibility to source the materials as well as perform the repairs. If the landlord fails to do so, the landlord may do the repairs and charge the tenant for the materials and labour.

Section 32 of the *Act* requires that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find that the tenant breached section 32 by failing to repair the door damage and I award the landlord the cost of the replacement doors, together with the labour charged by the landlord's contractor to install the doors.

Item	Amount
Door	\$74.00
Closet door	\$109.00
GST/PST (7% + 5%)	\$21.96
Labour to install doors	\$100.00

Total	\$304.96
--------------	-----------------

Section 21 of the Regs state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As there was no condition inspection report done at the commencement or end of the tenancy, I find the landlord is unable to prove to me the condition of the shower rod or the towel holder at the commencement of the tenancy. Consequently, I dismiss these portions of the landlord's claim.

Lastly, the landlord seeks compensation for the cleaning out and removing the items left behind at the end of the tenancy. I have reviewed the photos of the rental unit taken at the end of the tenancy. I see half-used food items left behind in the refrigerator (that was not wiped clean) full cupboards and a sink area left looking as though somebody was still living there.

While the tenant's witness testified that she was given permission to leave behind some of the items for the next tenant, I find the state of the unit at the end of the tenancy did not comply with section 33 of the *Act* which states:

when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Even if I were to accept that the landlord allowed the tenant to leave behind items for the next tenant, the tenant would still be expected to pack those items into a box rather than leave them in the cupboards at the end of the tenancy. Likewise, I am not satisfied that "J" gave the tenant permission to leave half-eaten food and used condiments for the next tenant's use. Even if the permission had been given, the obligation to clean the fridge was not extinguished.

The landlord provided an invoice from a person she hired to "*clear out all the kitchen wares and food left behind in the cupboards.... haul 5 bags to the dumpster full of items*". The same invoice charges the landlord for dismantling a heavy wood shelving unit, however no testimony regarding this was provided and no photographs of this were supplied as evidence. I grant the landlord **\$50.00** for the additional labour involved in cleaning the rental unit and removing the garbage.

As the landlord's application was generally successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Item	Amount
Door replacement and repair	\$304.96
Cleaning and garbage removal	\$50.00
Filing fee	\$100.00

Less security deposit (doubled)	(\$1,280.00)
TOTAL	(\$825.04)

Conclusion

I award a monetary order in the tenant's favour in the amount of \$825.04.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 30, 2022

Residential Tenancy Branch